

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

NEW ENGLAND CENTRAL
RAILROAD, INC.,

Plaintiff/Counterdefendant,

-v.-

Civil Action No. 04-30235-MAP

SPRINGFIELD TERMINAL
RAILWAY COMPANY, et al.,

Defendants/Counterclaimants.

MOTION FOR PARTIAL SUMMARY JUDGMENT

Springfield Terminal Railway Company and Boston and Maine Corporation (collectively, “ST/BM”), who are the defendants/counterclaimants herein, move, pursuant to Fed. R. Civ. P. 56, Loc. R. 7.1 and 56.1, and ¶ 3 of this Court’s pretrial scheduling order of February 6, 2007 [Dkt. #54], for summary judgment on the following issues:

1. ST/BM is not liable to the plaintiff, New England Central Railroad, Inc. (“NECR”), for any damages or injuries suffered by NECR in connection with the derailment of an ST/BM train on NECR’s Connecticut River Line near Hartland, Vermont, on July 3, 2004 (the “Derailment”). The Derailment was caused by NECR’s gross negligence, and no negligence on the part of ST/BM contributed to the Derailment or to NECR’s injuries.
2. NECR is liable to ST/BM for the damages and injuries suffered by ST/BM in connection with the Derailment because the Derailment was caused by NECR’s gross negligence and no negligence on the part of ST/BM contributed to the Derailment or to ST/BM’s injuries.

3. At a minimum, NECR has offered no evidence of gross negligence or willful misconduct on the part of ST/BM, and so Counts VII and X of the Amended Complaint must be dismissed.

4. Counts I and II of the Amended Complaint [Dkt. #16] fail to state claims on which relief can be granted under 49 U.S.C. § 11704(a) because the Interstate Commission's 1990 Trackage Rights Order ("TRO") does not require ST/BM to take, or refrain from taking, any action in respect of the Derailment. These counts accordingly should be dismissed.

5. Counts V and VIII of the Amended Complaint, which allege breach of contract, fail to state claims on which relief can be granted because the TRO, which governs ST/BM's use of the NECR tracks, is not a contract between ST/BM and NECR. These counts accordingly should be dismissed.

In support of this motion, ST/BM relies upon the annexed declarations of Roger D. Bergeron and David A. Nagy, along with the annexed Memorandum of Reasons and Statement of Material Facts as to Which There is No Genuine Issue to be Tried. Counsel for both sides have conferred regarding this motion but have been unable to resolve or narrow the issues presented.

Respectfully submitted,



Eric L. Hirschhorn
Debra R. Coletti
Winston & Strawn LLP
1700 K Street, NW
Washington DC 20006
202-282-5700

Robert B. Culliford (BBO #638468)

Pan Am Systems, Inc.
Pease International Tradeport
14 Aviation Drive
Portsmouth NH 03801
603-766-2002

*Attorneys for Defendants/Counterclaimants
Springfield Terminal Railway Company
and Boston and Maine Corporation*

March 23, 2007

CERTIFICATE OF SERVICE

I hereby certify that service of this motion and the accompanying papers will be made on counsel for NECR, the plaintiff/counterdefendant, by means of the Court's electronic filing system.

A handwritten signature in black ink, appearing to read "Eric L. Hirschhorn", written over a horizontal line.

Eric L. Hirschhorn